

AFFORDABLE DWELLING UNIT PROGRAM

Official Administrative Procedures and Regulations

Definitions:

Affordable Dwelling Unit (ADU): A housing unit for which the rental and/or sale price is regulated pursuant to the provisions of Section 38-43, Zoning, of the Code of the City of Falls Church, VA, Affordable Dwelling Unit Program.

Construction costs: The cost to build, particularly an improvement; includes the direct costs of labor and materials plus the contractor's indirect costs. Construction costs may include the appraisal, building permits, zoning fees, tap fees, City review fees, utilities, occupancy permits, miscellaneous permit/fees, architectural/engineering costs, construction loan interest, legal fees, builder's risk insurance, liability insurance, real estate taxes, project supervision, soft cost contingency, development fees, closing costs.

Low income: Household income that does not exceed sixty (60) percent of the median income for the Washington Primary Metropolitan Statistical Area (PMSA), as determined by the U.S. Department of Housing and Urban Development (HUD), with adjustments for household size. NOTE: HUD income determinations are updated annually and are available from local HUD offices for the appropriate jurisdictions.

Moderate Income: Household income that is at least sixty one (61) percent and not more than eighty (80) percent of the median income for the Washington Primary Metropolitan Statistical Area (PMSA), as determined by the U.S. Department of Housing and Urban Development (HUD), with adjustments for household size.

Persons with disabilities: Any persons who are unable to engage in any substantial gainful activity because of any physical or mental impairments that are expected to result in death or have lasted or can be expected to last continuously for at least 12 months.

Senior: Any persons who are not less than sixty-two (62) years of age at the time of application.

- (1) *Affordable Dwelling Unit Income Eligibility Limits.* The income eligibility limits for households desiring to purchase a home is at least fifty (50) and no more than eighty (80) percent of median household income for the Washington Primary Metropolitan Statistical Area and for households desiring to rent an apartment, no more than sixty (60) percent of median household income. These figures are based on household size and current U.S. Department of Housing and Urban Development (HUD) income guidelines.

- (2) Affordable Dwelling Units Asset Eligibility Limits. Liquid assets shall be limited to \$30,000 per household. Liquid assets shall be defined as any item of value that can be readily turned into cash. Liquid assets shall include, but shall not be limited to, cash gifts, stocks, bonds, certificates of deposit, and savings accounts. Retirement accounts recognized by the Internal Revenue Service shall be excluded from the definition of liquid assets except, however, any payout from retirement accounts as monthly or lump-sum disbursements, shall be counted as income when determining the income eligibility of an applicant for the Affordable Dwelling Unit program at the time of application.
- (3) Other Program Eligibility Requirements. Applicant(s) may not presently own property nor have owned such property within the last three years. The two exceptions to this requirement are as follows:
- a. Any individual who is a displaced homemaker, owned a home with his or her spouse or resided in a home owned by the spouse, or;
 - b. Any individual who is a single parent may not be excluded on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.
 - c. Priority preference shall be used in the selection of ADU owners and renters. The following preferences shall apply in establishing the order of priority for purchasers or renters: In addition to the priorities described below, in each situation the applicant(s) must make up a household whose size is appropriate for the unit as those stated in the table in (2)d.
 1. Seniors and persons with disabilities who live in the City of Falls Church.
 2. Non-seniors who live in the City of Falls Church.
 3. Seniors and persons with disabilities who work for the City of Falls Church or its schools.
 4. Non-Seniors who work for the City of Falls Church or its schools.
 5. Seniors and persons with disabilities who work in the City of Falls Church.
 6. Non-seniors who work in the City of Falls Church.
 7. Seniors and persons with disabilities who do not live in the City of Falls Church.
 8. Non-seniors who do not live in the City of Falls Church.

If there are multiple households, which meet the eligibility and preference criteria established above (e.g., “tied” applications), the City shall then select the buyers with priority preference based on the

order in which applications were received, or as articulated by the City in the ADU application.

- d. The following is a description of the household size that is appropriate for various unit types. The appropriate number of persons, however, may be modified if the unit sizes are not correspondent with the International Code Council.

Unit Size	Minimum # of Persons	Maximum # of Persons
Efficiency	1	1
One Bedroom	1	2
Two Bedroom	2	4
Three Bedroom	3	6

- e. The Housing Commission may recommend other eligibility criteria.

- (4) Regulation Authority. The sale and rental of affordable dwelling units shall be regulated by the City of Falls Church City Council or by its designee. The Housing Commission shall develop and recommend general specifications for prototypical single-family detached, single-family attached, and multifamily affordable dwelling units, and shall determine the construction costs of the prototypical units on a semi-annual basis, as determined from generally accepted construction cost indices. See section (13) for more information about the Housing Commission.
- (5) Administration – General. In the administration of the Affordable Dwelling Unit Program, recommendations on the design and construction specifications shall be made by the Housing Commission and be structured so that affordable dwelling units offered for sale shall be affordable to households whose income is at least fifty (50) percent, but does not exceed eighty (80) percent of median household income. Affordable dwelling units offered for rent shall be affordable to households whose income is no more than sixty (60) percent of the median household income. Median household income shall be determined for the Washington Primary Metropolitan Statistical Area (PMSA) as established by the U.S. Department of Housing and Urban Development.
- (6) Initial Sales of Units; Purchase Option Periods; Priority for Purchase.
 - a. The sale of affordable dwelling units shall be regulated by the City of Falls Church City Council or its designee. The City Council or its designee, upon the recommendation of the Housing Commission, shall adopt reasonable rules and procedures to assist in the regulation and monitoring of the sale and resale of affordable dwelling units.

- b. The City of Falls Church City Council, or its designee, which may include nonprofit organizations, shall have the right of first refusal on a project-by-project basis to purchase the for-sale affordable dwelling units within a development for a sixty-day purchase period. The following requirements apply to such period:
 - 1. The sixty (60) day purchase option period shall begin on the date of receipt of written notification from the owner, sent by registered or certified mail, advising the City, or its designee, that particular affordable dwelling units are, or will be, available for purchase.
 - 2. Such written notice may be sent by the owner at any time after the issuance of a certificate of occupancy for the affordable dwelling unit that is being offered for sale.
 - 3. The written notice shall state the following information:
 - a. The number of bedrooms;
 - b. Floor area (in square feet);
 - c. Amenities;
 - d. The target date for affordable dwelling unit availability;
 - e. The number of affordable dwelling units available and their location within the development;
 - f. The address of each affordable dwelling unit, which shall include the tax map and parcel number or Property Identification Number;
 - g. Any type of special financing which may be available; and
 - h. A copy of the approved subdivision and final site plan for the development in which the affordable units are located.
- c. Any remaining for-sale affordable dwelling units within a development shall be offered for sale exclusively for a sixty (60) day purchase option period to persons who meet the income eligibility criteria established by the City or its designee and who have been issued a Certificate of Qualification by the City of Falls Church Division of Housing and Human Services. The following requirements apply to such a period.
 - 1. The sixty (60) day purchase option period shall begin on the date the City or its designee receives written notification from the owner, sent by registered or certified mail, advising the City or its designee that a particular affordable dwelling unit is or will be available for purchase.
 - a. Such written notice may be sent by the owner at any time after the issuance of a certificate of occupancy for the affordable unit.
 - b. Such written notice shall state all information as required in section (6)b.3.
- d. After the expiration of the purchase option periods referenced in subsections (6)b. and (6)c. hereof, affordable dwelling units not sold,

or not under contract to be sold, shall be offered for sale to City qualified and designated nonprofits. The following requirements apply.

1. The qualified nonprofits shall have a thirty-day (30) purchase option period within which to commit to purchase the affordable dwelling units. This thirty-day (30) period shall begin on the date of receipt of written notification from the owner, sent by registered or certified mail, advising that particular affordable dwelling units are or will be available for purchase as explained in section (6)b.3.
 2. The written notice shall include all information as required in section (6)b.3.
 3. Such written notice may be sent by the owner any time after the expiration of a purchase option period referenced in subsections (6)b. and (6)c. hereof. If a qualified nonprofit elects to purchase a particular affordable dwelling unit, it shall so notify the owner in writing.
- e. After the expiration of the time period(s) referenced in subsections (6)b. and (6)c. hereof, affordable dwelling units which are not sold can be sold as market rate units by the builder, provided that the difference between the actual sales price and the ADU Program sales price shall be divided equally between the seller and the City. Any share of the profit that the City receives from such sales shall be allocated to the City's Affordable Housing Fund.

(7) City Lien upon Initial Sale

- a. In order to recapture a portion of the cost of providing the Affordable Dwelling Unit Program and to provide a source of funding dedicated to continuing the Program, the City, in further consideration of meeting the public purpose of assisting persons of low and moderate income obtain housing through the Program, shall share in the net proceeds of the first market rate resale of affordable dwelling units sold after the expiration of the fifteen (15) year price control period. This provision shall expire after 99 years from the date of the initial sale of the ADU.
- b. Upon the initial sale of affordable dwelling units by the builder, the City's interest in sharing in the proceeds of the first market rate resale of the affordable dwelling unit shall be secured by a promissory note executed by the purchaser payable to the City.
- c. The promissory note shall provide that the City shall be paid in an amount equal to fifty percent (50%) of the net proceeds of sale over and above the then current control sales price for the affordable dwelling at the first market resale. The City shall reserve the authority to reduce the City's share of the net proceeds at the time of resale to

ensure that the owners of the ADUs are not negatively impacted by any significant downturn in the housing market.

- d. The term of the promissory note shall expire upon the first market rate resale of the affordable dwelling unit after the expiration of the 15-year control period. This provision shall expire after 99 years of the date of the initial sale.
- e. The promissory note executed by the purchaser shall be secured by a deed of trust also executed by the purchaser creating a lien upon the affordable dwelling unit for the benefit of the City. The City shall not unreasonably withhold its agreement to subordinate the City deed of trust to other deeds of trust or mortgages securing only the repayment of purchase money notes. The lien created by the deed of trust shall be a lien running with the property until released by the City or until its expiration.
- f. The proceeds of sale of affordable dwelling units sold at fair market rates (i.e., appraised value) received by the City shall be deposited in the City's Affordable Housing Fund.

(8) Sales Price

- a. The Housing Commission shall initially and semiannually thereafter recommend the citywide sales prices for affordable dwelling units. Calculations of the affordable dwelling unit sales prices shall be determined by using the following criteria:
 - 1. Maximum income eligibility limits for households desiring to purchase an ADU is no more than eighty (80) percent of median household income;
 - 2. Household size;
 - 3. Number of bedrooms in units in question;
 - 4. Size of ADU;
 - 5. Current U.S. Department of Housing and Urban Development (HUD) income guidelines for the Washington, D.C./Northern Virginia MSA;
 - 6. Prevailing interest rates; and
 - 7. Other factors deemed appropriate by the Housing Commission.
- b. The Housing Commission will recommend development targets to establish priority pricing of the for-sale affordable dwelling units. The Housing Commission shall consider the following in determining priority pricing:
 - 1. Demographic characteristics of City residents;
 - 2. Underserved populations;
 - 3. Gaps in affordable housing stock.

- c. Sales prices shall include, among other costs, provisions for builder-paid permanent mortgage placement costs, closing costs, except for pre-paid proffers given and accepted through a rezoning approval.
- d. Sales prices may include a one and one-half (1.5) percent sales commission/finders fee to be paid to a real estate agent who secures a purchaser for an affordable dwelling unit.

(9) Initial Rental of Units.

- a. The rental of affordable dwelling units shall be regulated by the City of Falls Church City Council or its designee. The City of Falls Church City Council may, upon recommendation of the Housing Commission, adopt reasonable rules and procedures to assist in the regulation and monitoring of the rental of affordable dwelling units.
- b. For the initial rental of affordable dwelling units within a single-family detached, a single-family attached or a multifamily dwelling unit development, written notification from the owner shall be sent by registered or certified mail advising the City or its designee that particular affordable dwelling units are or will be available to rent.
 - 1. Such written notice may be sent by the owner at any time after the issuance of a certificate of occupancy for the affordable dwelling unit that is being offered for rent.
 - 2. Such written notice shall state all information as required in section (6)b.3. All affordable dwelling units available for rent shall be leased for a minimum six (6) month period, with a maximum term of lease of twelve (12) months, to tenants who meet the income eligibility criteria established by the City or its designee and who have been issued a Certificate of Qualification by the City of Falls Church Division of Housing and Human Services. Following the initial lease term, subsequent leases may be done on an annual, bi-annual or monthly basis.
- a. The lease agreements for such units shall include conditions which require the tenant to occupy the unit as his or her domicile, which prohibit the subleasing of the unit, which require continued compliance with the income eligibility criteria established by the City, and which require the tenant to annually verify his or her annual income and such other facts that the owner/landlord may require in order to ensure that the tenant continues to meet the income eligibility criteria established by the City.

- b. Tenants shall continue to meet the income eligibility criteria established by the City in order to continue to occupy the affordable dwelling unit. Tenants who no longer meet the income eligibility criteria may continue to occupy an affordable dwelling unit until the end of the lease term. Following the initial lease term, if the tenant is no longer income eligible, the tenant will have one hundred and twenty (120) days to move out of the affordable dwelling unit.
- 3. Income eligibility of tenants of rental affordable dwelling units shall be verified prior to lease renewal.
- 4. The owner/landlord of a development containing rental affordable dwelling units shall provide the City or its designee with information regarding the occupancy of rental affordable dwelling units on a yearly basis, at a minimum. Such information shall consist of a statement, verified under oath, which certifies the following as of the first of such month.
 - a. The address and name of the development and the name of the owner/landlord;
 - b. The number of rental affordable dwelling units, by bedroom count, which are vacant;
 - c. The number of rental affordable dwelling units, by bedroom count, which are leased. For each such unit, the statement shall contain the following information:
 - 1. The unit address and bedroom count;
 - 2. The tenant's name and household size;
 - 3. The effective date of the lease;
 - 4. The current monthly rent.
 - d. A statement that to the best of the owner/landlord's information and belief, the tenants who lease and occupy rental affordable dwelling units meet the income eligibility criteria established by the City, except those tenants eligible to remain in their rental affordable dwelling units, as specified in section (9)b.2.b.
 - e. Tenants shall provide documentation of income to the owner/landlord and shall consent to release of income documentation to the City.
 - f. The owner/landlord shall provide the City or its designee with a copy of each new or revised annual tenant income verification obtained from the tenants.

(10) Rental Prices

Rents are determined using the following criteria: (1) maximum income eligibility limits for households desiring to rent an apartment is no more than sixty (60) percent of median household income; (2) household

size; (3) number of bedrooms in units in question; (4) size of affordable dwelling unit; and (5) current U.S. Department of Housing and Urban Development (HUD) income guidelines for the Washington, D.C./Northern Virginia MSA.

a. Establishment of Rental Prices

1. The Housing Commission shall initially and semiannually thereafter recommend citywide rental affordable dwelling unit prices. Adjustments to the affordable dwelling unit rental prices shall be made according to the change in the Washington Primary Metropolitan Statistical Area (PMSA) median income as published by the U.S. Department of Housing and Urban Development and/or such indices that reflect the cost of rental housing in the City of Falls Church as selected by the Housing Commission. The Housing Commission will develop targets to establish priority pricing of the for-sale affordable dwelling units. Housing Commission shall consider the following in determining priority pricing:
 - a. Demographic characteristics of City residents;
 - b. Underserved populations;
 - c. Gaps in affordable housing stock.
2. The process for recommending rental prices will be determined by the Housing Commission. The Housing Commission will determine and recommend those costs to be included within the rental price of a rental affordable dwelling unit and those costs to be excluded from the rental price of such a unit.

(11) Procedures and Conditions Following Initial Sale or Rental.

a. For-Sale Affordable Dwelling Units

1. Owners of for-sale affordable dwelling units shall submit an annual affidavit certifying that they continue to occupy their respective affordable dwelling unit as their primary domicile.
2. Every affordable dwelling unit shall have a price control period of 15 years. Any time an affordable dwelling unit is sold before its 15-year control period expires, the control period for the subsequent ADU owner will start at year zero for an additional fifteen years. At the time of the initial sale of an individual affordable dwelling unit, the owner shall provide in the sales contract and shall record, with the deed for each affordable unit sold, a covenant running with the land in favor of the City which expressly provides all of the following:
 - a. The affordable dwelling unit may not be resold during the fifteen (15) year control period for an amount that exceeds the limits as established by the resale price calculation identified

in the deed covenant for each property, as determined by the City.

- b. Each time the unit may be offered for resale, it may also be offered exclusively through the City or its designee to persons who meet the income eligibility criteria established by the City and who have been issued a Certificate of Qualification by the City of Falls Church Division of Housing and Human Services for a sixty-day period, with an additional thirty days allowed for settlement.
 - c. The City of Falls Church City Council, or its designee, which may include nonprofits, shall have the right of first purchase for each unit for resale for the same sixty-day period.
 - d. The covenant shall be senior to all instruments securing permanent financing and shall be binding upon all assignees, mortgagees, purchasers and other successors in interest.
 - e. The covenant shall state that any and all financing documents shall require the lender to provide to the City or its designee written notice of any delinquency or other event of default under a mortgage. The City or its designee shall have the right to purchase the ADU, for a sixty-day (60) period, to cure such a default, although the City shall have no obligation to cure the default.
 - f. An ADU owner may only refinance the mortgage for the ADU for an amount that does not exceed the calculated resale price for the ADU, as provided by the City.
 - g. The ADU owner shall sell the ADU for an amount not less than the fair market value (i.e., appraised value) of the ADU.
 - h. Improvements can be incorporated in the resale price of the ADUs as determined by the City. Such improvements shall be specifically identified in the covenant.
3. The sixty-day (60) resale period shall begin upon City receipt of written notice, sent by registered or certified mail, from the owner that an affordable dwelling unit is available for resale. The written notice shall include the address of the affordable dwelling unit and shall include the tax map and parcel number or Real Property Code Number.

b. Rental Affordable Dwelling Units

1. The prices for subsequent re-rentals shall be controlled for a period of twenty (20) years after the initial rental transaction for the respective rental affordable dwelling unit. Prior to approval of a record plat for single family dwelling lots containing affordable dwelling units or construction plans and profiles for single-family attached lots containing affordable dwelling units or site plans for multifamily buildings containing affordable dwelling units, the owner shall record

a covenant, running with the land, in favor of the City or its designee which covenant provides that for twenty years from the date of the issuance of the first occupancy permit for the rental affordable dwelling units required under this chapter, which date shall be specified in the covenant:

- a. No such unit may be rented for an amount that exceeds the limits recommended by the Housing Commission.
 - b. Each time one of the rental affordable dwelling units is offered for re-rental, it must be offered exclusively through the City or its designee to persons who meet the income eligibility criteria established by the City and who have been issued a Certificate of Qualification by the City of Falls Church Division of Housing and Human Services.
 - c. The covenant shall be binding upon all assignees, mortgages, purchasers and other successors in interest.
2. Rentals subsequent to the initial rental during the twenty-year control period shall not exceed the rental rate recommended by the Housing Commission.
3. Any and all financing documents shall provide that, in the event of default and foreclosure of projects and units subject to the requirements of this chapter that are comprised of rental affordable dwelling units, the lender shall give written notice to the City or its designee of the foreclosure sale at least thirty (30) days prior thereto. The City or its designee shall have the right to cure the default, but shall have not duty or obligation to do so.
4. Notwithstanding the above, for multifamily dwelling re-rentals, all of the relevant provisions of this chapter shall apply for the twenty-year control period.

(12) Procedures and Conditions for Cash in Lieu of Constructing ADUs

- a. This section is reserved for future use.

(13) The Housing Commission

- a. The Housing Commission may adopt rules and procedures for the formulation of a recommendation to the City Council, or its designee, regarding the amounts and terms of sale and rental prices of affordable dwelling units, the criteria for qualifying a nonprofit, and fees to be included in sales prices for developer costs to conduct a lottery and to qualify potential purchasers of affordable dwelling units.
- b. The Housing Commission may consult with local builders and construction experts to assist it in recommending the costs of the prototypical single-family detached, single-family attached, and multifamily affordable units.

- c. Any recommendation by the Housing Commission shall require the affirmative vote of a majority of those members present. A quorum must be present in order for the Housing Commission to make a recommendation. A quorum shall consist of at least four (4) members.

(14) City Manager

- a. Per City's Council's March 28, 2005 approval, the City Manager (or designee) may amend the Affordable Dwelling Unit Program Official Administrative Procedures and Regulations, as needed.

Revised: September 12, 2005

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